

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 3, 1859.—Referred to the Committee on Claims.

The COURT OF CLAIMS submitted the following

REPORT.

*To the honorable the Senate and House of Representatives of the United States of America in Congress assembled:*

The Court of Claims respectfully presents the following documents as the report in the case of

ALEXANDER CROSS *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Two statements of the claimant's account, with and without interest, and papers relating thereto, marked A B C, transmitted to the House of Representatives.
3. Agreement between United States Solicitor and claimant's counsel relating to papers therein named, and numbered from 1 to 6, inclusive, transmitted to the House of Representatives.
4. Consent of United States Solicitor as to the manner of taking testimony and depositions taken in the case, and numbered from 1 to 11, transmitted to the House of Representatives.
5. Certified documents from the Treasury Department, with an additional letter from the Secretary of the Treasury, and other letters relating to the case, transmitted to the House of Representatives.
6. Claimant's brief.
7. Opinions of each of the Judges of the Court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Washington, this third day of February,  
[L. s.] A. D. 1859.

SAM'L H. HUNTINGTON,  
*Chief Clerk Court of Claims..*

## UNITED STATES COURT OF CLAIMS.

*To the honorable the Judges of the Court of Claims :*

Your petitioner, Alexander Cross, a citizen of the United Kingdom of Great Britain and Ireland, and now residing at San Francisco, in the State of California, respectfully represents and states : That on the 28th of April, A. D. 1849, one Daniel Saffarans, of the State of Tennessee, entered into an article of agreement with James Collier, the collector of the port of San Francisco, in the State of California, by which the said Saffarans covenanted that he would well and substantially erect, build, and finish a store or building in said San Francisco, of the dimensions and description following, viz : the store to be four stories high, twenty-five feet wide, and one hundred feet long, to be constructed of stone and brick, so far as may be necessary to make it strictly fire-proof, and to be built in the strongest and most approved manner—the site of the building to be selected by the said collector—and to be finished and erected ready for occupancy by the 1st of September, A. D. 1850 ; the store, when finished, approved, and accepted by the collector, to be rented to the United States for the term of fifteen years, the rent per annum to be determined upon and fixed by the collector at the time said store should be erected, and received by said collector. For a more particular knowledge of the contents of said article of agreement, reference is here had to a copy thereof, which is hereunto annexed, and marked “Exhibit No. 1.”

On the 8th day of May, A. D. 1849, the abovementioned article of agreement, with certain reservations and conditions, was approved of by W. M. Meredith, the then Secretary of the Treasury, one of which was, that the rate of rent to be paid for the building to be agreed upon by the collector should be subject to the express approval of the Secretary of the Treasury ; a true copy of which approval of said articles of agreement is hereto annexed, marked “Exhibit No. 2.”

That the said Daniel Saffarans being without the means necessary to carry said contract into effect, and in order to procure the same, did, on the 17th of May, A. D. 1849, by his power of attorney of that date, fully authorize one George N. Sanders, of the city of New York, to negotiate a loan or loans of money with any person or persons in the United States of America or elsewhere, for the purpose of fulfilling and completing said contract ; a true copy of which power is hereto annexed, marked “Exhibit No. 3.”

That, under and in virtue of said power of attorney, said Sanders, on the 9th of January, A. D. 1850, entered into a contract of that date with your petitioner, who was then the head of a commercial house in Glasgow, Scotland, and of another commercial house in San Francisco, California, by which your petitioner undertook that said commercial houses should attend to the carrying out of said Saffarans' said contract, for and in his behalf, and should advance the capital necessary, in Europe and California, to the extent of fifty thousand dollars, at a rate of interest, and to be reimbursed in the manner

therein provided, with various other provisions and covenants which it is not deemed necessary to specify, inasmuch as will be hereinafter stated, your petitioner, in order to secure himself for his advances, was subsequently obliged to purchase in, and take an assignment of, the entire interest of said Saffarans in said contract and of the building erected under it. A true copy of said contract between said Saffarans and your petitioner, made as above stated by said Sanders, as his attorney, on said 9th day of January, 1850, is hereto annexed, marked "Exhibit No. 4."

That, in compliance with his said contract with said Saffarans, your petitioner, through said commercial houses, advanced the necessary capital, and erected the building in all respects in conformity to the requirements of the contract of said Saffarans with said collector of the port of San Francisco, first herein above mentioned, and on the site selected by the said collector for said building.

And to do this, instead of fifty thousand, your petitioner found himself under the necessity of advancing the sum of one hundred thousand dollars or thereabouts.

When the building was completed and ready for the occupancy of the government, the then Secretary of the Treasury, (Thomas Corwin,) anticipating that the then high rates of rents in San Francisco could not be permanently maintained, was very desirous of procuring a change of that provision of the contract of the 28th of April, A. D. 1849, which bound the government to rent the building for the term of fifteen years. Yielding to the urgent solicitations of the Secretary of the Treasury in this particular, the said Daniel Saffarans reluctantly consented that the term of the lease should be reduced from fifteen years to ten. Accordingly, on the 11th of November, A. D. 1850, a supplemental contract was entered into by T. Butler King, the then collector of the port of San Francisco, of the one part, and said Saffarans of the other, in modification of, and to carry into effect, the said contract of said 28th of April, A. D. 1849. This last contract reduced the term of the lease to ten years, and fixed the rent at fifteen hundred dollars per month, payable monthly by the collector of San Francisco; a true copy of which said last named contract is hereunto annexed, marked "Exhibit No. 5."

This last contract was entered into by the said collector, T. Butler King, at the city of Washington, and was on the same day approved by the Secretary of the Treasury, on the express understanding and condition that the said T. Butler King, on his arrival at San Francisco, should first examine the warehouse and duly accept the same, as being substantially of the character, description, and dimensions required by the stipulations contained in said article of agreement of 28th April, A. D. 1849. Which said approval of said Secretary was endorsed on said supplemental contract, a true copy of which is hereunto annexed, marked "Exhibit No. 6."

The said T. Butler King, on his arrival at San Francisco, first examined the said warehouse, and then endorsed on said contract his acceptance of said building, to take effect as of the date of the 14th of January, 1851; a true copy of which acceptance is hereunto annexed, marked "Exhibit No. 7."

The contract with the government being thus fully completed, and the said Saffarans being wholly unable to reimburse the advances of capital made by your petitioner in the erection of the building, he was driven to the necessity of negotiating with said Saffarans for the purchase of his interest in the warehouse; and to effect this he was compelled to take the building and ground on which it stands at cost, and give to Saffarans a bonus or profit of twenty thousand dollars.

The preliminaries of a purchase being arranged, the said Saffarans, by his writing under his hand and seal, of the date of the 10th July, A. D. 1851, executed by him in the State of Tennessee, assigned and conveyed to your petitioner his said articles of agreement with the government of the United States, with all the rights, rents, and interests accrued, or to accrue, under and in virtue of the same. Which said assignment was by him transmitted to California to his son, Isaac Saffarans, with an endorsement on it stating that it was to be held as an escrow, and not to be valid until R. H. Crittenden, A. P. Sheldon, and said Isaac Saffarans should endorse upon it their approval. A true copy of which assignment and endorsement upon it is hereunto annexed, marked "Exhibit No. 8."

Said Saffarans, along with his assignment, transmitted to California a power of attorney of the same date, (viz: July 10, 1851,) authorizing Robert H. Crittenden, Isaac Saffarans, and A. P. Sheldon to deliver said assignment to your petitioner, with a power of substitution. A true copy of which power is hereto annexed, marked "Exhibit No. 9."

It so happened that said Crittenden and Sheldon had both left the State of California before the arrival and receipt there of said assignment; by reason whereof the said R. H. Crittenden, by his power of attorney, dated at New York, July 25, 1851, substituted as his attorney, under said original power, George W. Guthrie, of San Francisco, to act for him and in his stead and place. A true copy of which substituted power is hereto annexed, marked "Exhibit No. 10."

By virtue of said power of attorney and substituted power, the said Robert H. Crittenden, by his attorney, George W. Guthrie, and the said Isaac Saffarans, by and for himself, did, on the 15th of September, A. D. 1851, endorse on said assignment of said Daniel Saffarans their approval thereof.

And afterwards, on the 19th of November, A. D. 1851, the said A. P. Sheldon, by his substituted power, authorized Isaac Saffarans, B., of San Francisco, to endorse for him, as his attorney, his approval of said assignment, as will appear by a true copy of said last named substituted power of attorney, hereunto annexed, marked "Exhibit No. 11."

On the 6th of January, 1852, the said A. P. Sheldon, by his attorney, (the said Isaac Saffarans, B.,) endorsed on said assignment his approval thereof, whereby the said assignment became complete, and took effect as a transfer to your petitioner of the entire interest in said warehouse, together with all the rights, rents, and interests accrued, or to accrue, under and in virtue of said Daniel Saffarans' said contract with the United States; and your petitioner to the present time has remained, and does remain, the sole proprietor of the same.



The said assignment being thus completed, and having taken effect in law, the said Daniel Saffarans, by his attorney, Isaac Saffarans, B., by a note or memorandum in writing, endorsed on said contract with the government, addressed to the Hon. T. Butler King, collector of the port of San Francisco, requested that all back and future rents arising under the contract might be paid to said Alexander Cross. A true copy of which note of request is hereto annexed, marked "Exhibit No. 12."

And your petitioner states that said collector of said port of San Francisco was, immediately after said assignment and written request, duly notified thereof, who, in conformity thereto, accepted and recognized your petitioner as the landlord of the government; and from the 14th of January, 1851, to the 14th of August, 1853, the rent of said warehouse was regularly paid monthly to your petitioner, in pursuance to said contract with the government.

On the 12th day of April, 1853, the Secretary of the Treasury, without any valid reason, and without any right to do so, issued instructions to Richard P. Hammond, the then collector of San Francisco, to abandon said warehouse, and to stop the payment of rent thereon. In pursuance to those instructions, the said Richard P. Hammond, as collector of said port, on the 4th of August, 1853, addressed a letter to your petitioner, advising him that in pursuance to instructions from the Secretary of the Treasury, he should, on the 13th of that month, abandon the building, and should pay no rent thereon after that date. A true copy of which letter is hereto annexed, marked "Exhibit No. 13."

On the 13th of the same month of August your petitioner addressed and delivered to said collector his written answer to said letter of the 4th, in which he informed the collector that he did not recognize the right of the Secretary of the Treasury to rescind said contract, and that he should claim payment of rent pursuant thereto until the expiration of the term for which the building was leased. A true copy of which letter is hereto annexed, marked "Exhibit No. 14."

That said collector, in pursuance to his said letter and of said instructions from the Secretary of the Treasury, did, on said 13th of August, 1853, abandon said building, and has ever since refused to occupy the same or pay rent thereon.

And your petitioner further states that he has spent more than three long years in unavailing efforts to induce the Secretary of the Treasury to revoke said instructions, and allow the arrears of rent to be paid, which the said Secretary has steadily refused, and still does refuse to do.

And your petitioner complains that he has been unjustly subjected to great and ruinous expense in sending agents from California to Washington city to lay his case and his claims before the Secretary of the Treasury; and the repudiation of said lease, by putting it out of his power to meet his engagements, has also brought upon him great and ruinous embarrassment in his business affairs.

That on the 13th of November, 1856, thirty-nine months had elapsed since the payment of any rent on said lease; and that the arrears of rent then and now due to your petitioner amount to the

sum of fifty-eight thousand five hundred dollars, besides the interest, which ought to be allowed thereon.

Your petitioner prays for such relief in the premises as under the circumstances of his case is just and right.

ALEXANDER CROSS,  
By S. F. VINTON,  
*His Counsel.*

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COPY OF EXHIBITS.

*No. 1.—Article of agreement made and concluded this 28th of April, 1849, by and between Daniel Saffarans, of the first part, and the United States of America, by James Collier, collector of the district of San Francisco, California, acting by the direction and authority of William M. Meredith, Secretary of the Treasury, of the second part.*

The said party of the first part, for the considerations hereinafter mentioned, doth for himself, his heirs, executors, and administrators, hereby covenant with the said party of the second part that he will well and substantially erect, build, and finish a store or building in said San Francisco, of the dimensions and description hereinafter mentioned, the whole subject to such modifications and alterations as the said collector of San Francisco shall require or approve, to wit: Said store to be four stories high, twenty-five feet wide, and one hundred feet long; to be constructed of iron and brick, so far as may be necessary to make them strictly fire-proof, and to be built in the strongest and most approved manner, the said collector reserving to himself the sole power and privilege of selecting the site or ground upon which said store or stores shall be erected. It is further understood that said collector is to lease said store or stores of said party of the first part for the term of fifteen years; the rent per annum to be determined upon and fixed by the collector at the time said store or stores shall be erected, and received by said collector.

And the said party of the first part doth further covenant that he will erect and finish said store in such manner as the said collector shall require or approve, so that the said store shall be ready for occupancy on or before the first day of September, eighteen hundred and fifty.

And the said party of the first part doth further covenant, that whenever the said store shall be erected and finished and ready for occupancy, to the acceptance of the said collector, he will lease, and he doth hereby lease said store to the said party of the second part, for a term commencing on the day when the said collector shall approve and accept of said store, and terminating on the expiration of the term aforesaid, to wit, fifteen years from the time they are received by said collector, upon the terms and conditions and for the rent hereinafter mentioned.

And the said party of the first part doth further covenant, that the

said store is free from all incumbrances, and that the United States shall not be liable for any lien upon said store during the term aforesaid, or any other claim of any nature whatsoever, except only the rent hereinafter stipulated; and that he will keep the said store in good and sufficient repair, injuries arising from the misconduct of officers of the government only excepted.

And the said party of the second part do hereby covenant with the said party of the first part, his heirs, executors, and administrators, that whenever the said store shall be ready for the occupancy to the acceptance of said collector, they will hire and lease of the said party of the first part the said store, upon the terms and conditions, and for the period hereinafter mentioned; that they will pay rent for said store at the rate of ——— dollars per annum, said rent to be paid quarterly, on the first of January, April, July, and October; and that the said rent on said store shall commence as soon as the same shall be ready for occupancy and accepted by the said collector as aforesaid.

And it is further agreed by the said parties of the first and second parts, that should the said store be destroyed or injured by fire, or the action of any of the elements, so that the same shall become untenable, the said party of the first part shall re-build and repair the same as soon as practicable, and the rent of said store shall cease and remain discontinued during all the time the occupancy of said store shall be interrupted or prevented from the causes aforesaid, or any other cause not arising from the act or default of the Secretary of the Treasury or the collector aforesaid.

In testimony whereof, the said parties to these presents, on the day and year first above written, have hereunto, and to two other copies of the same, interchangeably set their hands and seals—the said party of the first part, in person, and the United States, by James Collier, collector, acting as aforesaid; and Wm. M. Meredith, Secretary of the Treasury, in evidence of the authority aforesaid, and of his approval of the premises, has hereunto affixed his official signature.

DANIEL SAFFARANS. [SEAL.]  
JAMES COLLIER, [SEAL.]

*Collector of the district of Upper California.*

Signed, sealed, and delivered in presence of—

SAM'L S. WYLIE.  
N. HEADINGTON.

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*Exhibit No. 2.—Copy of approval of the Secretary of the Treasury.*

The foregoing articles of agreement are approved on the following express reservations and conditions only, to wit:

*First.* That wherever the name of James Collier, collector of the district of San Francisco, California, is mentioned, or where the words collector or said collector are used, they shall be deemed and understood to mean and apply to the collector of the district aforesaid in his official capacity for the time being.

*Second.* That this agreement is understood and intended to apply to the construction and renting of *one* store building only, and to no more, unless hereafter deemed necessary, and then rented with the approbation of the Secretary of the Treasury.

*Third.* The rate of rent to be paid for the building to be agreed upon by the collector, subject expressly to the approval of the Secretary of the Treasury.

*Fourth.* The rent stipulated for to depend upon and be paid out of appropriations expressly made by Congress for the purpose, and from no other source, or according to the existing laws at the times of payment.

In testimony whereof, I, William M. Meredith, Secretary of the Treasury, have hereunto signed my name, and affixed the seal [L. s.] of the Treasury Department, this eighth day of May, in the year of our Lord one thousand eight hundred and forty-nine.

W. M. MEREDITH,

*Secretary of the Treasury.*

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*Copy of Exhibit No. 3.*

Know all men by these presents that I, Daniel Saffarans, a resident of the State of Tennessee, have made, constituted, and appointed, and by these presents do make, constitute, and appoint George N. Sanders, of the city of New York, my true and lawful attorney, for me and in my name, place, and stead, for the purposes hereinafter mentioned.

Whereas, on the 28th of April, 1849, articles of agreement were made and concluded by and between me, of the first part, and James Collier, collector of the district of San Francisco, California, acting by the direction and authority of William M. Meredith, Secretary of the Treasury of the United States, of the second part, of which said articles of agreement a certified copy is hereunto annexed;

And whereas said articles of agreement require me to erect the store or building mentioned in said articles of agreement on or before the first day of September, A. D. 1850;

And whereas, in order to fulfil all the requirements of said articles of agreement on the part of the party of the first part, it is necessary that other parties should be interested in the contract made between the parties to said articles of agreement: Therefore I do appoint the said George N. Sanders my true and lawful attorney, with full powers to negotiate a loan or loans of money with any person or persons in the United States of America or elsewhere, for the purpose of completing and fulfilling the contract aforesaid; said attorney having by these presents full power and authority to associate with himself such person or persons as he may see fit, to carry out the object of the said agreement; such person or persons as he may select or agree with to have such share of the rents, issues, and profits to arise and grow out of the store or building to be erected as per said agreement, and are not to require the payment of interest on such sums as they may advance until such store or building has been taken possession of by



the United States government or its representative; and such rent to be paid for such store or building shall be appropriated as it is paid quarterly to the persons who may become interested in said agreement in proportion to their respective shares and interest therein, and as may be agreed upon between them and my attorney hereby appointed. And the said George N. Sanders, in consideration of the labor and trouble he may have in executing the powers herein contained, shall have and receive, and the same is hereby granted and given to him, one-sixth of the whole interest of the party of the first part in said article of agreement and the subject-matter thereof; giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully, to all intents and purposes, as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done by virtue hereof

In witness whereof, I have hereunto set my hand and seal the seventeenth day of May, in the year one thousand eight hundred and forty-nine.

DANIEL SAFFARANS.

Sealed and delivered in presence of—

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*Copy of Exhibit No. 4.*

Articles of agreement made and entered into this ninth day of January, 1850, between Daniel Saffarans, of Tennessee, of the first part, and Alexander Cross, of Valparaiso, of the second part, witnesseth:

That whereas the party of the first part did enter into a contract on the 28th day of April, 1849, with the collector of the port of San Francisco (approved by the Secretary of the Treasury) for the construction of an iron warehouse, to be used as a government store in said port, on terms and conditions as will more fully appear by reference to said contract;

And whereas said party of the first part is desirous of associating with him some capitalist who will aid in carrying out said contract;

And whereas the said party of the second part is willing to unite with the said party of the first part in carrying out that object: Therefore, they have come to the following agreement, to wit:

*First.* The said Alexander Cross, as senior partner of the commercial houses of Cross, Wedderspoon & Co., of Glasgow, Scotland, and Cross, Hobson & Co., of San Francisco, Upper California, undertakes that they attend to the carrying out of said contract for and in behalf of the contractor; advancing the capital necessary, in Europe and California, to the extent of fifty thousand dollars, at the rate of ten per centum per annum for interest, risks, losses by exchange, and for services rendered not otherwise provided for; the same to be

reimbursed in three equal annual instalments, or in two, at the option of Mr. Saffarans, as may hereafter be found convenient to him.

*Second.* Cross agrees, on behalf of his Glasgow firm, to attend to the orders of said Saffarans, or his attorney in New York, in procuring the construction of one or more iron warehouses, in the best manner and on the best terms, and to forward the same with all speed to San Francisco, covering the same by the necessary insurance, their commission being limited to five per cent. on invoice; said orders to be accompanied by a remittance of one-sixth the approximate amount.

*Third.* Cross engages, on behalf of his San Francisco house, to make the necessary entries, pay the duty, and land said warehouses, and superintend in a general way their erection, previously buying or securing the necessary ground or site, with the corresponding approval of the collector of the custom-house, (as stipulated in contract,) their commission on said land and buildings being limited to five per cent.

*Fourth.* He further engages that his said California firm shall lease, on proper terms, the said warehouses to the collector, collect the rents at the proper times, and keep an account of the same; that they sell such spare lands as may not be required for the purposes of the contract; their commission agency in both cases being limited to five per cent.

*Fifth.* The interest or shares of this contract are declared by Saffarans to be divided into one hundred; of which Cross, as advancing capitalist, is assigned hereby twenty-seven and two-thirds shares, ( $27\frac{2}{3}$ .) the contractor representing seventy-two and one-third shares, ( $72\frac{1}{3}$ .)

*Sixth.* The whole accounts to be kept and made up in San Francisco, the cost of grounds and erections being capitalized when completed, and proceeds of rents collected, or spare lands sold credited. Then yearly make up the same, and after setting aside and repaying to the advancers the stipulated annual instalments, account with the parties interested for surplus or deficiency.

*Seventh.* Saffarans agrees to extend to said Cross, Hobson & Co., of San Francisco, his full power of attorney as his sole agents in California respecting this contract, to be irrevocable and continued for at least two years, and until all the advances are liquidated; any change which the major part of those interested may deem necessary in the agency afterwards, Mr. Saffarans will be at liberty to make.

*Eighth.* Cross, on behalf of his California house, agrees to give the preference of such iron houses which they, meantime, have to their address, of a suitable character for this contract, on reasonable terms; more particularly one of two stories sent to Valparaiso, per Favorite, from London in July last, if not previously engaged, and Mr. Saffarans agrees to purchase such at the market price, which can hereafter be determined to his satisfaction.

It is further understood that said Saffarans is to pay one-sixth of the cost of the building herein referred to, or of any others that may be constructed under this contract, payable in three and six months from time of notice of contract for their construction. The money to be advanced by said Saffarans is to represent five and two-thirds shares, and to be refunded in same manner as the moneys advanced by said Cross, said five and two-thirds shares to be placed on precisely

the same footing of the twenty-seven and two-thirds shares of said Cross.

Witness the hands and seals of the parties the day and date above mentioned.

DANIEL SAFFARANS. [SEAL]

By his attorney, GEO. N. SANDERS. [SEAL.]

Witnessess:

ALFRED GILMORE.

A. J. OGLE.

SAMUEL B. HART.

*Explanatory note.*—The capital provided by advances, for present, is \$60,000, to the whole of which  $33\frac{1}{3}$  shares are assigned. To Cross, therefore, who puts \$50,000, corresponds  $27\frac{2}{3}$ ; and to Saffarans \$10,000,  $5\frac{2}{3}$ .

Ready cash is understood and is requisite for the purpose of the contract, both in Europe and in California, and should be provided so by Mr. Saffarans for his share, as per article; but if in negotiable paper, at three and six months, he to pay interest at 10 per cent. per annum. In case of any defection in either advancing parties, the shares will be hereafter modified on the above principle.

ALEX. CROSS.

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*Copy of Exhibit No. 5.*

Articles of agreement entered into this 11th day of November, 1850, between T. Butler King, collector of the port of San Francisco, for and on behalf of the United States government, of the first part, and Daniel Saffarans, of Tennessee, of the second part, witnesseth:

That whereas the party of the second part did, on the 28th day of April, 1849, enter into a contract with James Collier (then collector of the port of San Francisco) for the construction of an iron fire-proof warehouse, twenty five feet wide by one hundred feet deep, and four stories high, to be used for custom-house purposes at said port of San Francisco, under a lease to the government for the term of fifteen years, which said contract was approved by Wm. M. Meredith, (the Secretary of the Treasury,) on the 8th day of May, 1849, on conditions as expressed in said approval, and among others the following: "The rate of rent to be paid for the building to be agreed upon by the collector, subject expressly to the approval of the Secretary of the Treasury;"

And whereas the party to the second part to this agreement, in fulfilment of his contract with the said James Collier, has erected an iron fire-proof warehouse in San Francisco, of the dimensions and quality as stipulated for;

And whereas said Collier, as collector, did, on the — day of —, contract with the party of the second part to this agreement to rent said warehouse for a term of fifteen years, at the rate of two thousand dollars per month, which said contract was sent on to Washington city for the approval of the Secretary of the Treasury;

And whereas, the present Secretary of the Treasury, deeming the rate of rent for the term of fifteen years to be unreasonable, has disapproved of said contract of the \_\_\_\_\_ day of \_\_\_\_\_; but the government of the United States being much in need of said iron warehouse, for custom-house purposes in San Francisco, and said Saffarans being willing to make some abatement in the terms agreed on in the contract entered into with the said Collier on the \_\_\_\_\_ day of \_\_\_\_\_, the parties to this agreement have concluded the following terms:

The party of the first hereby agrees to rent said warehouse from the party of the second part for the term of ten years, from the day possession shall be delivered to the present collector, at a rent of fifteen hundred dollars per month, payable monthly by the collector of San Francisco. And the party of the second part doth hereby further covenant that said store is free from all incumbrances, and that the United States shall not be liable for any lien upon said store during the term aforesaid, or any other claim of any nature whatsoever, except only the rent herein stipulated to be paid, and that he will keep said store in good and sufficient repair, injuries arising from the misconduct of the officers of the government only excepted.

And it is further agreed by the parties of the first and second part, that should said store be destroyed or injured by the action of any of the elements, so that the same shall become untenable, the said party of the second part shall rebuild or repair said store as soon as practicable, and the rent of said store shall cease and remain discontinued during all the time the occupancy shall be interrupted from the causes aforesaid, or any other cause not arising from the act or default of the officers of the government.

In testimony whereof, the parties to this agreement have respectively hereunto set their hands and affixed their seals the day and year before written.

T. BUTLER KING, [SEAL.]  
*Collector of the port of San Francisco.*  
 DANIEL SAFFARANS. [SEAL.]

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*Copy of Exhibit No. 6.*

The foregoing articles of agreement are approved upon the following express understanding and conditions, that is to say:

That the collector, T. Butler King, esq., upon his arrival at San Francisco, shall first examine the warehouse in question, and duly accept the same as being substantially of the character, description, and dimensions required by the stipulations contained in the former articles of agreement herein referred to, then this approval is to take effect, otherwise to be null and void.

THOMAS CORWIN,  
*Secretary of the Treasury.*



*Copy of Exhibit No. 7.*

I, as collector of the port of San Francisco, do hereby accept the iron warehouse erected by Alexander Cross upon a part of the water lot No. 49, on Battery street, now in the occupancy of the United States government as a bonded warehouse, contracted to be built by Daniel Saffarans, as provided in a contract of which the within is a copy.

And I do hereby officially recognize said Cross as landlord; it being understood that I am to incur no individual responsibility in the premises. This acceptance to date as if done 14th of January, 1851.

T. BUTLER KING,

*As Collector of the port of San Francisco.*

*Copy of Exhibit No. 8.*

Having sold to Alexander Cross, for a valuable consideration, all my interests herein mentioned, I, Daniel Saffarans, do hereby transfer and assign the agreement of which the foregoing instrument is, in substance, a copy, with all the rights, rents, and interests accrued, or to accrue, under or in virtue of the same, to Alexander Cross, hereby placing him, to all intents and purposes, in my stead as regards said agreement, as though he instead of myself had been the original party thereto, he taking all the benefits of said agreement, and all its responsibilities. And I do release, quit-claim, and convey all my right, title, interest, and lien, if any, and whatever it may be, to the said Cross and his heirs forever.

The said Cross is hereby entitled and authorized to receive all the rent that has accrued and is now in arrear, or that may hereafter accrue under said agreement, for the house therein mentioned and alluded to.

In testimony whereof, I have hereunto set my hand and seal this 10th day of July, 1851.

DANIEL SAFFARANS. [SEAL.]

Signed, sealed, and acknowledged in presence of the undersigned witnesses:

H. M. LUSHER.

C. G. LEONARD.

JAMES ROSE, jr.

*Copy of endorsement on the above.*

It is agreed that this transfer will not be valid until R. H. Crittenden, Isaac Saffarans, and A. P. Sheldon endorse on it their approval. This 10th July, 1851.

DANIEL SAFFARANS.

*Exhibit No. 9.*

Know all men by these presents, that I, Daniel Saffarans, of the town of Memphis, in the State of Tennessee, do hereby nominate, constitute, and appoint Robert H. Crittenden, Isaac Saffarans, and A. P. Sheldon, my true and lawful attorneys in fact, for me and in my name to deliver to Alexander Cross, of San Francisco, in California, my assignment to said Cross of all my right, title, and interest in and to an iron warehouse in San Francisco, together with all rents accrued or to accrue on the same, as are more particularly set forth in my said assignment bearing date of the 1<sup>st</sup> of July, 1851, and attached to a certified copy of my contract of the 11th November, 1850, with T. Butler King, collector of San Francisco, for the rent of said house, &c.

And my said attorneys are also hereby fully authorized and empowered to receipt for and receive from said Cross all money, bonds, or notes stipulated to be received by me, as the consideration for said assignment, and to take from said Cross a release of all responsibility on my part arising out of any and all contracts heretofore made between us in relation to the building or renting of said house.

And my said attorneys are also hereby fully authorized and empowered, if any objection is made to the form of my said assignment or its mode of authentication, to alter and amend the same at their discretion, or in fact to make any new or other assignment for me.

And my said attorneys are also hereby fully empowered and authorized to substitute another attorney in their places, with the same full powers in the premises as are hereby conferred on them, hereby binding and obliging myself to ratify and confirm whatever my said attorneys or those substituted may do in the premises, and making their acts as binding on me as if done by myself.

DANIEL SAFFARANS. [SEAL]

Signed, sealed, and acknowledged, in presence of the undersigned witnesses:

H. M. LUSHER.

C. G. LEONARD.

JAMES ROSE, jr.

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*Copy of Exhibit No. 10.*

NEW YORK, July 25, 1851.

Know all men by these presents, that I, R. H. Crittenden, of Frankfort, Kentucky, do hereby nominate, constitute, and appoint George W. Guthrie, of the city of San Francisco, California, my true and lawful attorney in fact, to act for me under the foregoing joint power of attorney from Daniel Saffarans to Isaac Saffarans, A. P. Sheldon, and myself, with power of substitution, hereby authorizing the said Guthrie to exercise all the rights and powers which I myself could do under the said power of attorney from said Daniel Saffarans, binding myself to approve whatever the said Guthrie may do in the premises,

making his acts as binding as if done by me. Witness my hand and seal.

R. H. CRITTENDEN. [SEAL.]

Signed and sealed in presence of—

GEORGE N. SANDERS.

JAMES ELDREDGE.

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*Exhibit No. 11.*

Know all men by these presents, that I, A. P. Sheldon, of Sumner county, in the State of Tennessee, recently of San Francisco, in the State of California, have nominated, constituted, and appointed, and by these presents do nominate, constitute, and appoint, Isaac Saffarans, B., of San Francisco aforesaid, my true and lawful attorney in fact, for me and in my name and stead to endorse my name and approval upon a certain deed of conveyance executed by Daniel Saffarans, of Shelby county, Tennessee, to Alexander Cross, of England, now in San Francisco, about the month of June, 1851, whereby the said Daniel Saffarans conveyed to said Cross an iron fire-proof warehouse of four stories, erected by said Cross in the city of San Francisco aforesaid; which said warehouse is now occupied by the government of the United States, under a lease from the said Daniel Saffarans, for custom-house purposes, it being now impracticable for me, in the absence of papers relating to the same, to describe the property conveyed by said deed with more minuteness and precision; which said deed was sent to California by the said Saffarans as an escrow, to take effect as a deed, upon condition that the same should be approved and endorsed by Robert Crittenden, the said Isaac Saffarans, B., and myself; and the same has been approved and endorsed by the said Robert Crittenden, by George W. Guthrie, his attorney in fact, and by the said Isaac Saffarans, B., and would have been approved and endorsed by myself in person had I not left California before the said deed arrived there.

And I hereby engage to ratify and confirm the approval and endorsement of the said deed by my said attorney in fact, as fully and amply as though the same were done by myself in proper person.

In testimony whereof, I have hereunto set my hand and affixed my seal, this 19th day of November, 1851.

A. P. SHELDON. [SEAL.]

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*Exhibit No. 12.*

SAN FRANCISCO, *September 15, 1851.*

SIR: Having assigned and transferred to Alexander Cross within contract, you will please pay all back and future rents arising under the same to said Alexander Cross.

I remain, very respectfully, sir, your obedient servant,

DANIEL SAFFARANS,

Per Att'y, ISAAC SAFFARANS, B.

Hon. T. BUTLER KING,

*Collector of the port of San Francisco.*

*Copy of Exhibit No. 13.*

CUSTOM-HOUSE, SAN FRANCISCO,  
*Collector's Office, August 4, 1853.*

SIR: I have the honor to inform you that in obedience to instructions which I have received from the Secretary of the Treasury, under date of April 12, 1853, that the "pretended lease" under which the warehouse belonging to you, on Battery street, has been occupied for the storage of goods by the United States, "is not binding on the United States," and that I am to abandon that building. I shall, on the thirteenth instant, give up the possession of the said store, and not pay any rent for it after that date.

Respectfully, your obedient servant,

RICHARD P. HAMMOND,  
*Collector.*

ALEX. CROSS, Esq.

*Copy of Exhibit No. 14.*

SAN FRANCISCO, *August 13, 1853.*

SIR: I have to acknowledge the receipt of a letter from you, under date August 4, apprising me that in obedience to instructions from the Secretary of the Treasury you will, on the 13th instant, give up the possession of my warehouse on Battery street, and not pay any rent for it after that date.

I do not recognize a right in the Secretary of the Treasury to rescind my contract with the government in reference to said warehouse, and I shall therefore claim payment of rent, pursuant to said contract, until the expiration of the term for which the building was leased.

Respectfully, your obedient servant,

ALEX'R CROSS.

RICHARD P. HAMMOND, Esq.,  
*Collector of Customs.*

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UNITED STATES COURT OF CLAIMS.

ALEXANDER CROSS *vs.* THE UNITED STATES.

*Plaintiff's Brief.*

The plaintiff in this case submits the following brief of legal points and authorities, on which he relies to maintain his right of action:

1st. That the contract of the 11th of November, 1850, between T. Butler King, collector of the port of San Francisco, for and on behalf of the United States, with the approval thereof by the Secretary of the Treasury, of the first part, and Daniel Saffarans of the other part, by which said Saffarans leased to the United States for custom-house



purposes the warehouse named in the petition, was a valid contract mutually binding on the parties thereto.—(Vide printed petition, pages 1 and 3, exhibits Nos. 5, 6, and 7, pages 14, 15, and 16.)

2d. Where a contract is mutually binding, it can only be dissolved by the consent of both parties, and cannot be dissolved by one without the consent of the other.—(Leigh vs. Patterson, 8 Taunt., 560.)

Therefore the attempt, of Richard P. Hammond, the collector of San Francisco, by his letter of the 4th of August, 1853, under the instructions of the Secretary, to abandon and repudiate the lease and stop the payment of rent, against the will and without the consent of the lessor, was an act done without warrant of law and void, and in no way impaired the rights of the lessor.—(Vide printed petition, page 4, and exhibits Nos. 13 and 14, page 19.)

3d. The letter of instructions of the Secretary of the Treasury, of the 12th of April, 1853, directing said Hammond to abandon said warehouse and stop the payment of rent, which assigns his reasons for so doing, abounds in errors both of law and fact.

It is erroneous in matter of *law*, in stating that the acts of Congress give to the collector, and not to the Secretary, authority to select and rent warehouses; that the Secretary approves; but, that there is no authority given to him to rent.

It is admitted that the law authorizes a collector of the customs, “with the approbation of the principal officer of the Treasury department,” to provide, at the public expense, storehouses for the safe keeping of goods; (Vide 21st sec., of act of 2d March, 1779, vol. 1, Laws United States, 642;) but, it is also true, that the joint resolution of the 14th of February, 1850, (which the Secretary has wholly overlooked,) expressly authorizes the Secretary, in his discretion, to lease such warehouses “as may be necessary for the storage of unclaimed goods or goods which, for any other reason, are required by law to be stored by the government.—(Vide, 9th vol. Laws United States, 560.)

On this head, it will be claimed by plaintiff, that taking all the laws on this subject together, it is plain, that if a warehouse be leased by a collector with the approbation of the Secretary, given either before or after the execution of the lease, or if it be leased directly by the Secretary or under his direction, the lease is in either case, and in either of these modes, valid and binding on both parties to it.

4th. Said letter of instructions is erroneous in matter of fact, in stating that on the 11th of November, 1850, T. Butler King had not given bond or taken the oath of office; and that therefore, the lease made by him was void.

The fact is, that prior to the 1st of November, 1850, T. Butler King had taken the oath of office before the United States district judge of the southern district of New York; had given bond which was on that day (November 1st) approved by the Comptroller of the Treasury, and his commission, as collector, was on the last named day transmitted to him at New York, by mail.

On the 11th of November, ten days afterwards, he entered into the contract now in question, which was on the same day approved by the Secretary of the Treasury.

5th. It will be insisted that T. Butler King having his commission,  
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as collector, and having given bond to the approval of the Comptroller of the Treasury, (see 1st vol. Stat., 705,) the validity of his official acts does not depend upon his having taken or not taken the oath of office.

The act of March 2, 1799, (1 vol. Stat., 641,) provides for the appointment of collectors. The 20th section requires all officers and persons appointed in pursuance of that act to take an oath of office before entering on the duties of their respective offices, and within three months thereafter to transmit a certificate thereof to the Comptroller of the Treasury; and in default of taking the oath or transmitting a certificate thereof, the party failing shall forfeit and pay two hundred dollars.

The law does not declare that the official acts of the officers shall be void in default of taking the oath, which might work great mischief to the public and to innocent parties; but the penalty is imposed on the person of the party in default.

In other words, it will be insisted, that in this case the collector acted by authority of his commission and that the requirement that he should take an oath is directory and not mandatory.—(Jones vs. Gibson, 1 New Hamp. Rep., 266; Johnson vs. Wilson, 2 New Hamp., 205-'6; Speake vs. United States, 3 Cond. Rep., 248.)

In Bac. Ab., title Officer and Offices, letter E, it is said: "If an officer be created by letters patent he is a complete officer before he is sworn, and before an investiture."

6th. The commission of an officer of the United States is conclusive evidence of his appointment, and it amounts to this conclusive evidence when the appointing power has done every thing to be performed by him.—(Marbury vs. Madison, 1 Cranch, 157, 158, and 159.)

That an officer is such *de jure*, as well as *de facto*, from the date of his commission, is established by the fact that his salary commences from that date.—(Marbury vs. Madison, 1 Cranch, 161.)

7th. If it be necessary that a collector should accept his appointment to constitute him an officer *de jure*, then it will be insisted that the making of this contract, or doing any other official act after the delivery of the commission to him, would in law amount to an acceptance of the office.

8th. When a person has distinctly admitted or recognized the official capacity of another, he cannot afterwards dispute the validity of the appointment; (Johnson vs. Wilson, 2 New Hamp., 205-'6;) consequently, the approval of the contract by the Secretary of the Treasury estops the government, as against the lessor, from denying the official character of King.

9th. It is a well-established rule, that where an officer *de facto*—that is to say, one acting under color of office, whether ministerial or judicial—performs official acts, neither the validity of the appointment nor of the acts done, so far as the community or third persons are concerned, can be disputed or denied; this can be done only where the officer himself is a party.—(Jones vs. Gibson, 1 New Hamp., 266; Johnson vs. Wilson, 2 New Hamp., 206; State of Ohio vs. Constable, 7 Ohio Rep., 10; State of Ohio vs. Alling, 12 Ohio, 20; State of Ohio vs. Jacob, 17 Ohio, 143; Burke vs. Elliot, 4 Iredell, 355; Gilman vs.

Reddick, 4 Iredell, 368; McKintry *vs.* Tanner, 9 Johns. Rep., 135; People *vs.* Collins, 7 Johns. Rep., 549; 7 Cowen, 402; Fowler *vs.* Bebee, 9 Mass., 231; Riddle *vs.* Bedford, 7 Sargt. & Rawle, 249; 2 Maule & Selwyn, 141; 3 Barn & Ald., 266; 10 Mass., 301.)

In the case of *Wilson vs. Johnson*, Judge Woodbury says that it is well settled that, when the irregularity, whatever it may be, is not punishable at all, or only by a penalty, the acts of the officer are still valid in respect to third persons who may be interested in such acts; they are valid, also, in respect to the public, so that justice may not fail; and, for aught we perceive, the officer himself may be protected under them; on the contrary where the irregularity is by statute expressly made to invalidate the acts of the officer, or where such is the necessary construction, considering the nature of the office and of the irregularity, the officer himself cannot justify those acts in his official capacity.

10th. Upon the general principles of law, the government, by the approval of this contract by the Secretary of the Treasury, and the payment of rent for more than two and a half years, is estopped from denying the validity of the lease, except it might be for fraud in the procurement of it, of which the government was ignorant.

S. F. VINTON,  
*Solicitor for Plaintiff.*

WASHINGTON CITY, *May 28th*, 1857.

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IN THE COURT OF CLAIMS.

ALEXANDER CROSS *vs.* THE UNITED STATES.

Judge BLACKFORD's opinion.

This suit is for rent, and is founded on a lease of a warehouse situated in San Francisco, California. The lease is dated November 11, 1850, and is executed by one Daniel Saffarrans, as lessor, and by T. Butler King, collector of the port of San Francisco, on the part of the United States, as lessee. There is an assignment of the lease by the lessor to the claimant, dated July 10, 1851, endorsed on the lease; and there is, on the face of the assignment, the following writing:

"It is agreed that this transfer will not be valid until R. H. Crittenden, Isaac Saffarrans, and A. P. Sheldon, endorse on it their approval. This 10th July, 1851.

"DAN'L SAFFARRANS."

It will be observed that the authority to the three persons named, given by said writing, is joint, and not joint and several.

There is a power of attorney of the same date with that of said writing—that is, the 10th July, 1851—to the three persons aforesaid. It is copied into the petition, and there designated as No. 9. That power of attorney authorized those three persons to deliver said assignment, and do some other things, and also to appoint a substitute. But that power, like that contained in said writing, is joint, and not joint and several.

It appears that, on the 25th of July, 1851, Crittenden, one of said three men, undertook, by a separate act, to appoint Geo. W. Guthrie as his substitute, to act for him under said power of attorney from Daniel Saffarrans, authorizing said Guthrie to do all that he, Crittenden, could do under said power of attorney of Daniel Saffarrans. And it appears, also, that, on the 19th of November, 1851, Sheldon undertook to appoint Isaac Saffarrans (B) his attorney, to endorse his, Sheldon's, name and approval on said assignment.

There are on said assignment the following endorsements:

"State of California, county of San Francisco. The undersigned signify their approval to within transfer, by affixing hereto their seals and signatures, this fifteenth (15th) day of September, A. D. one thousand eight hundred and fifty-one.

"ROB'T H. CRITTENDEN, [SEAL.]

"By his att'y, G. W. GUTHRIE,

"ISAAC SAFFARRANS, (B) [SEAL.]

"Sealed and delivered in presence of—

"WARD McALLISTER."

"The undersigned signifies his approval to within transfer, by affixing hereto his hand and seal, this twenty-sixth day of January, one thousand eight hundred and fifty-two

"A. P. SHELDON, [SEAL.]

"Per ISAAC SAFFARRANS, (B)

"*His Attorney in fact.*"

"Signed, sealed, and delivered in presence—

"Witness: WARD McALLISTER."

I am of opinion that the condition to said assignment, which is written on its face, could not be complied with but by the joint act of the three persons named, or by their substitute jointly appointed by them, supposing them to have been authorized to appoint a substitute for the purpose. "It is a general rule of the common law," says Judge Story, "that where an authority is given to two or more persons to do an act, the act is valid to bind the principal only when all of them concur in doing it; for the authority is construed strictly, and the power is understood to be joint and not several."—(Story on Agency, sec. 42.)

The result of this suit depends upon a single question. That question is, has Daniel Saffarran's assignment to Cross of the lease been approved, and said endorsement of the approval made, by the joint act of R. H. Crittenden, Isaac Saffarrans, and A. P. Sheldon, or by their substitute jointly appointed by them, supposing they could appoint a substitute for the purpose? That question must be answered in the negative. There is no pretence that there has been any such joint approval or joint endorsement by those three persons or by their substitute jointly appointed by them.

There is on the lease the following endorsement:



“HONORABLE T. BUTLER KING,

“*Collector of the port of San Francisco :*

“SIR: Having assigned and transferred to Alexander Cross within contract, you will please pay all back and future rents arising under same to said Alexander Cross.

“I remain, &c.,

“DANIEL SAFFARRANS,

“Per attorney, ISAAC SAFFARRANS.

“SAN FRANCISCO, *September 15, 1851.*”

There is no evidence of the execution of that paper by Isaac Saffarrans; nor is it shown that Daniel Saffarrans had ever authorized Isaac Saffarrans to sign any such paper or make any such request. There is among the papers a power of attorney by Daniel Saffarrans to Isaac Saffarrans, dated April 12, 1851, but it confers no such power as is assumed in that paper, nor is that its object. On the contrary, the authority is to collect the rents then due or to become due from the government to Daniel Saffarrans; and to buy out Cross' interest in the warehouse, alleged to be twenty-seven and two-thirds hundredths of the whole. The date of this power is about five months before the date of said assignment. There is also a power of attorney by Daniel Saffarrans to Robert H. Crittenden, Isaac Saffarrans, and A. P. Sheldon, (No. 9, in the petition,) before noticed; but it gives no authority to Isaac Saffarrans to sign any such paper as the one in question.

We have not, according to our rules, any special pleading; but I understand that the general issue is considered to be always filed to the petition; and that the claimant can, in no case, recover without proving his cause of action.

The present suit is for rent, and is founded on a lease. The claimant, who sues as assignee, does not prove himself to be the owner of the lease or of the reversion. He, of course, has no cause of action.

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IN THE COURT OF CLAIMS.

ALEXANDER CROSS *vs.* THE UNITED STATES.

*January 24, 1859.*

SCARBURGH, J.

On the 28th day of April, A. D. 1849, Daniel Saffarrans entered into a contract with the United States of the following tenor and effect:

Daniel Saffarrans, on his part, agreed to erect and finish, in the city of San Francisco, a building of the dimensions and description therein mentioned, so that the same should be ready for occupancy on or before the 1st day of September, A. D. 1850; and to lease the building to the United States for a term commencing on the day when the collector of San Francisco should approve and accept the same, and terminating on the expiration of fifteen years thereafter. And the United States, on their part, agreed to accept a lease of the said building from Daniel

Saffarrans for the term above mentioned, at a rent to be determined upon by the collector of San Francisco when he should receive the building, and be payable quarter-yearly on the first day of January, April, July, and October in every year.

This contract was entered into on the part of the United States by the collector of San Francisco, subject to the approval of the Secretary of the Treasury. It was, on the 8th day of May, A. D. 1849, approved by the Secretary of the Treasury on certain conditions, which were endorsed thereon in writing. The third condition was, that the rate of rent to be paid for the building should be agreed upon by the collector, subject expressly to the approval of the Secretary of the Treasury; and the fourth was, that the rent stipulated for should depend upon and be paid out of appropriations expressly made by Congress for the purpose and from no other source, or according to the existing laws at the time of payment.

A power of attorney from Daniel Saffarrans to George W. Sanders is endorsed upon the copy of the above mentioned contract on file with the papers of this case.

On the 11th day of November, A. D. 1850, another contract was entered into between the United States and Daniel Saffarrans. The latter contract recited that Daniel Saffarrans did, on the 28th day of April, A. D. 1849, enter into a contract with the United States for the construction of an iron-proof warehouse of the dimensions and description in the recital mentioned, to be used for custom-house purposes, at the port of San Francisco, under a lease to the United States for the term of fifteen years, and that the contract so recited was approved by the Secretary of the Treasury subject to certain conditions.

The contract of the 11th day of November, A. D. 1850, also recited that Daniel Saffarrans had, in fulfilment of his contract first above mentioned, erected an iron fire-proof warehouse in San Francisco, of the dimensions and quality stipulated for therein, and that the collector of San Francisco did, on the       day of       contract with Daniel Saffarrans to rent the same for the term of fifteen years at the rate of two thousand dollars *per* month, but that the Secretary of the Treasury, deeming the rate of rent for fifteen years unreasonable, had disapproved thereof. It also recited, that the United States being much in need of the iron warehouse above mentioned for custom-house purposes in San Francisco, and Saffarrans being willing to make some abatement of the terms agreed on in the contract entered into with the collector of San Francisco on the       day of       , the parties had concluded the following terms:

1. The United States agreed to rent the warehouse from Saffarrans for the term of ten years from the day possession should be delivered to the then collector, at a rent of *fifteen hundred dollars* a month, payable monthly by the collector of San Francisco. There were other stipulations, but it is not necessary to mention them here.

The Secretary of the Treasury appended to the contract of the 11th of November, A. D. 1850, the following: "The foregoing articles of agreement are approved upon the following express understanding and conditions—that is to say, that the collector, T. Butler King,

esq., upon his arrival at San Francisco, shall first examine the warehouse in question, and duly accept the same as being substantially of the character, description, and dimensions required by the stipulations contained in the former articles of agreement herein referred to, then this approval is to take effect, otherwise to be null and void."

On the 10th day of July, A. D. 1851, Daniel Saffarrans made and appended to a copy of the contract of the 11th day of November, A. D. 1850, an instrument of which the following is a copy:

"Having sold to Alexander Cross, for a valuable consideration, all my interests hereafter mentioned, I, Daniel Saffarrans, do hereby transfer and assign the agreement, of which the foregoing instrument is in substance a copy, with all the rights, rents, and interests accrued or to accrue under or in virtue of the same, to Alexander Cross; hereby placing him to all intents and purposes in my stead as regards said agreement, as though he, instead of myself, had been the original party thereto.

"He taking all the benefits of said agreement, and all its responsibilities, and I do release, quit claim, and convey all my right, title, interest, and lien, if any, and whatever it may be, to the said Cross and his heirs forever.

"The said Cross is hereby entitled and authorized to receive all the rent that has accrued, and is now in arrear, or that may hereafter accrue under said agreement for the house therein mentioned and alluded.

"In testimony whereof I have hereunto set my hand and seal, this tenth day of July, eighteen hundred and fifty-one.

"DAN'L SAFFARRANS. [SEAL.]

"Signed, sealed, and acknowledged in presence of the undersigned witnesses:

"H. M. LUSHER.

"O. G. LEONARD.

"JAMES ROSE, JR."

Upon this instrument Saffarrans made the following endorsement:

"It is agreed that this transfer will not be valid until R. H. Crittenden, Isaac Saffarrans, and A. P. Sheldon endorse on it their approval, this 10th July, 1851.

"DAN'L SAFFARRANS."

On the 15th day of September, A. D. 1851, G. W. Guthrie, professing to act as the attorney of Robert H. Crittenden, and Isaac Saffarrans, (B,) made and endorsed upon the instrument last above mentioned (the assignment from Saffarrans to Cross) the following:

"The undersigned signify their approval to within transfer, by affixing hereto their seals and signatures, this fifteenth (15th) day of September, A. D. one thousand eight hundred and fifty-one.

"ROBERT H. CRITTENDEN, [SEAL.]

"By his attorney, G. W. GUTHRIE.

"ISAAC SAFFARRANS, (B.) [SEAL.]

"Sealed and delivered in presence of—

"WARD McALLISTER."

On the 26th day of January, A. D. 1852, Isaac Saffarrans, (B,) professing to act as the attorney in fact of A. P. Sheldon, made and endorsed upon the above mentioned assignment from Saffarrans to Cross, the following :

"The undersigned signifies his approval to within transfer, by affixing hereto his hand and seal, this twenty-sixth day of January, one thousand eight hundred and fifty-two.

"A. P. SHELDON, [SEAL.]  
"Per ISAAC SAFFARRANS, (B.)

"*His attorney in fact.*

"Signed, sealed, and delivered in presence—witness :

"WARD McALLISTER."

On the 10th day of July, A. D. 1851, Daniel Saffarrans gave Robert H. Crittenden, Isaac Saffarrans, and A. P. Sheldon a power of attorney, of which the following is a copy :

"Know all men by these presents, that I, Daniel Saffarrans, of the town of Memphis, in the State of Tennessee, do hereby nominate, constitute, and appoint Robert H. Crittenden, Isaac Saffarrans, and A. P. Sheldon, my true and lawful attorneys in fact, for me and in my name to deliver to Alexander Cross, of San Francisco, in California, my assignment to said Cross of all my right, title, and interest in and to an iron warehouse in San Francisco, together with all rents accrued or to accrue on the same, as are more particularly set forth in my said assignment, bearing date of the 10th day of July, 1851, and attached to a certified copy of my contract of 11th November, 1850, with T. Butler King, collector of San Francisco, for the rent of said houses, &c.

"And my said attorneys are also hereby fully authorized and empowered to receipt for and receive from said Cross all money, bonds, or notes stipulated to be received by me as the consideration for said assignment, and to take from said Cross a release of all responsibility on my part, arising out of any and all contracts heretofore made between us in relation to the building or renting of said house.

"And my said attorneys are also hereby fully authorized and empowered, if any objection is made to the form of my said assignment or its mode of authentication, to alter or amend the same at their discretion, or in fact to make any new or other assignment for me.

"And my said attorneys are also hereby fully empowered and authorized to substitute another attorney in their places, with the same full powers in the premises as are hereby conferred on them, hereby binding and obliging myself to ratify and confirm whatever my said attorneys or their substitute may do in the premises, and making their acts as binding on me as if done by myself.

"In testimony whereof I have hereunto set my hand and seal this 10th day of July, 1851.

"DAN'L SAFFARRANS. [SEAL.]

"Signed, sealed, and delivered in presence of the undersigned witnesses :

"H. M. LUSHER.

"C. G. LEONARD.

"JAMES ROSE, JR."



On the 25th day of July, A. D. 1851, R. H. Crittenden gave to George W. Guthrie a power of attorney, of which the following is a copy :

“NEW YORK, *July 25, 1851.*

“Know all men by these presents, that I, R. H. Crittenden, of Frankfort, Kentucky, do hereby nominate, constitute, and appoint George W. Guthrie, of the city of San Francisco, California, my true and lawful attorney in fact to act for me under the foregoing joint power of attorney from Daniel Saffarrans to Isaac Saffarrans, A. P. Sheldon, and myself, with power of substitution ; hereby authorizing the said Guthrie to exercise all the rights and powers which I myself could do under the said power of attorney from Daniel Saffarrans ; binding myself to approve whatever the said Guthrie may do in the premises, making his acts as binding as if done by me.

“Witness my hand and seal

“R. H. CRITTENDEN. [L. s.]

“Signed and sealed in presence of—

“JAMES ELDREDGE.

“GEORGE N. SANDERS.”

The last two powers of attorney were written on the same sheet of paper.

On the 19th day of November, A. D. 1851, A. P. Sheldon gave Isaac Saffarans (B) a power of attorney, of which the following is a copy :

“Know all men by these presents, that I, A. P. Sheldon, of Sumner county, in the State of Tennessee, recently of San Francisco, in the State of California, have nominated, constituted, and appointed, and by these presents do nominate, constitute, and appoint Isaac Saffarans, (B,) of San Francisco, aforesaid, my true and lawful attorney in fact, for me and in my name and stead to endorse my name and approval upon a certain deed of conveyance, executed by Daniel Saffarans, of Shelby county, Tennessee, to Alexander Cross, of England, now in San Francisco, about the month of June, 1851, whereby the said Daniel Saffarans conveyed to the said Cross an iron fire-proof warehouse of four stories, erected by said Cross in the city of San Francisco aforesaid, which said warehouse is now occupied by the government of the United States, under a lease from the said Daniel Saffarans, for custom-house purposes, it being now impracticable for me, in the absence of papers relating to the same, to describe the property conveyed by said deed with more minuteness and precision, which said deed was sent to California by the said Daniel Saffarans as an *escrow* to take effect as a deed upon condition that the same should be approved and endorsed by Robert Crittenden, the said Isaac Saffarans, (B,) and myself, and the same has been approved and endorsed by the said Robert Crittenden, by George Guthrie, his attorney in fact, and by the said Isaac Saffarans, (B,) and would have been approved and endorsed by myself, in person, had I not left California before the said deed arrived there.

“And I hereby engage to ratify and confirm the approval and en-

dorsement of the said deed by my said attorney in fact, as fully and amply as though the same were done by myself in proper person.

"In testimony whereof I have hereunto set my hand and affixed my seal, this 19th day of November, in the year of our Lord one thousand eight hundred and fifty-one

"A. P. SHELDON. [L. s.]"

On the 12th day of April, A. D. 1851, Daniel Saffarans gave Isaac Saffarans, (B,) power of attorney, of which the following is a copy :

"Know all men by these presents, that I, Daniel Saffarans, of the county of Shelby, and State of Tennessee, have nominated, constituted, and appointed, and by these presents do nominate, constitute, and appoint my son, Isaac Saffarans, (B,) now of San Francisco, in the State of California, my true and lawful attorney in fact, for me and in my name to demand, collect, and receive all moneys due to me, or hereafter to become due to me in the State of California, and particularly to demand and receive from the collector of the customs at the port of San Francisco, or any other proper officer whose duty it may be to pay the same, all moneys now due or hereafter to become due to me from the government of the United States of America, for the rent of an iron warehouse in San Francisco, under a contract made by me with the said government, and full receipts and acquittances for all such moneys to execute in my name.

"And I do also hereby further authorize and empower my said attorney in fact, for me and in my name to purchase from Alexander Cross all his interest in an iron warehouse in San Francisco, erected by said Cross under a contract with me; the extent of said interest being twenty-seven and two-thirds one hundredths ( $\frac{27\frac{2}{3}}{100}$ ) of the whole, and to pay to said Cross whatever may be due to him from me on account of advances made by him for me towards the purchase of the lot on which the said warehouse is erected, and the erection of said warehouse; and if it shall be necessary to raise money for the purpose of making the said purchase and payment, I hereby authorize my said attorney in fact to raise the same by a loan, to any amount not exceeding ninety thousand dollars, (\$90,000,) and to secure the repayment thereof by an assignment of the rents of the said warehouse hereafter to become due from the government of the United States, in such manner as may be agreed on by the party or parties loaning the money and my said attorney in fact, to whose discretion I confide all the details of the necessary arrangements respecting the security to be given for said loan; and I hereby engage to ratify and confirm all the acts and things that may be done by my said attorney in fact in the premises pursuant to this power of attorney, in as full and ample a manner as though the same were done by myself in proper person.

"Given under my hand and seal this twelfth day of April, in the year of our Lord one thousand eight hundred and fifty-one.

"DANIEL SAFFARANS. [L. s.]"

On the 15th day of September, A. D. 1851, Isaac Saffarans, (B,) professing to act as attorney for Daniel Saffarans, endorsed upon the above mentioned copy of the contract of the 11th day of November,

A. D. 1850, between the United States and Daniel Saffarans, as follows:

“SAN FRANCISCO, *September 15, 1851.*

“SIR: Having assigned and transferred to Alexander Cross within contract, you will please pay all back and future rents arising under same to said Alexander Cross.

“I am, very respectfully, sir, your obedient servant,

“DANIEL SAFFARANS,

“Per attorney, ISAAC SAFFARANS, (B.)

“Hon. T. BUTLER KING,

“*Collector of the port of San Francisco.*”

T. Butler King, as collector of the port of San Francisco, made upon the last mentioned copy of the contract of the 11th day of November, A. D. 1850, the following endorsement:

“I, as collector of the port of San Francisco, do hereby accept the iron warehouse erected by Alexander Cross upon a part of the water lot, No. 49, on Battery street, now in the occupation of the United States government as a bonded warehouse, as the warehouse contracted to be built by Daniel Saffarans, as provided in a contract of which the within is a copy. And I do hereby officially recognize said Cross as landlord, it being understood that I am to incur no individual responsibility in the premises. This acceptance to date as if done 14th January, 1851.

“T. BUTLER KING.

“*Collector of the Port of San Francisco.*”

The Secretary of the Treasury, in a letter dated April 12, A. D. 1853, addressed to R. P. Hammond, esq., collector of San Francisco, said: “The agreement between Daniel Saffarans and James Collier, under date of the 28th of April, 1849, appears to have been made in Hamilton county, Ohio, for the building by Saffarans of a fire-proof building at San Francisco, on a site to be selected by said Collier, and the lease of it for fifteen years, at a rent of \$ , which contract was approved by Wm. M. Meredith, Secretary of the Treasury, on condition that the rate of rent to be paid for the building should be agreed upon by the collector and approved by the Secretary, and the rent stipulated for to depend upon and to be paid out of appropriations expressly made by Congress for the purpose and from no other source, or according to existing laws at the time of payment.

“The supplemental agreement to give effect to the proceeding, under date of the 11th November, 1850, between T. Butler King, and Daniel Saffarans, recites the building was completed, that the collector, King, had contracted to rent said warehouse for fifteen years, at \$2,000 *per* month; that the contract was sent to Washington, and Thomas Corwin disapproved the rent at \$2,000 *per* month. On the 11th November, 1850, it appears the rent was fixed at \$1,800 [1,500?] *per* month, for ten years from taking possession, between the owners and T. Butler King.

“T. Butler King was appointed collector on the 14th October, 1850,

and the law requires he should, before entering on his duties, take the oath of office in his collection district. He was in Washington at the time of his appointment, and had not on the 11th November, 1850, given bond or taken the oath of office, and was consequently not collector. He was in the same condition when the supposed agreement for a rent of \$2,000 *per month* was made.

"The law requires the sworn collector to make these contracts, and he must be sworn in the district, and he ought to see the houses he rents, and know the value of the rent by actual personal knowledge. He was not a collector when the rent was fixed at \$1,500 per month, and was not in the district, and had not the knowledge, and could not know the value of the property or its adaptation to the public use. This pretended lease is not binding on the United States.

\* \* \* \* \*

"The collector will abandon the premises mentioned in the agreement with \* \* \* \* and that with Daniel Saffarans, and notify the lessors respectively that rent will no longer be paid for said buildings, and that said pretended leases are held void."

T. Butler King took the oath of office as collector of the district of San Francisco on the 31st day of October, A. D. 1850, before Hon. Sam. R. Betts, United States judge for the southern district of New York.

E. C. Seaman, acting comptroller, in a letter to T. Butler King, dated November 1, A. D. 1850, said: "Your official bond having been received and approved, your commission as collector is herewith transmitted. Inasmuch as there is question about the legality of your oath of office endorsed thereon, taken before the judge of the district court for the southern district of New York, you are hereby required, before entering upon the duties of your office, to take another oath of office within the collection district before some judge or magistrate authorized to administer oaths therein, and have the official character and signature of such officer duly certified by the clerk of a court of record of the proper county under his seal of office, in accordance with the form of oath and certificate, and the instructions at the bottom of the blank bond herein enclosed and you will please to transmit the same, so certified, forthwith to this office."

On the 8th day of January, A. D. 1851, T. Butler King, collector of the district of San Francisco, took the oath of his office within his district before a judge of the 4th district court in the State of California.

The Secretary of the Treasury, in his letter to the collector of San Francisco, dated April 12, A. D. 1853, omitted to notice the joint resolution of February 14, A. D. 1850. This resolution expressly provides, "That the Secretary of the Treasury shall be authorized to dispose of the bonded warehouses now leased by government, on or before the first of January next, on the best practicable terms for the government; but he may retain such parts of said houses, *or lease such other houses*, at his discretion, as may be necessary for the storage of unclaimed goods, or goods which for any other reason are required by law to be stored by the government."—(9 Stat. at Lar., pp. 560-1.



See the opinion of this court in the case of Theodore Adams *vs.* The United States.)

In pursuance of the instructions above mentioned, the collector of San Francisco gave notice to the petitioner in writing, as follows:

“CUSTOM-HOUSE, SAN FRANCISCO,  
“*Collector's Office, August 4, 1853.*

“SIR: I have the honor to inform you, that in obedience to instructions which I have received from the Secretary of the Treasury, under date of April 12, 1853, that ‘the pretended lease’ under which the warehouse belonging to you on Battery street has been occupied for the storage of goods by the United States, ‘is not binding on the United States,’ and that I am to abandon that building; I shall on the 13th instant give up the possession of the said store, and not pay any rent for it after that date.

“Respectfully, your obedient servant,

“RICHARD P. HAMMOND,  
“*Collector.*

“ALEXANDER CROSS, Esq.”

The petitioner replied to this notice as follows:

“SAN FRANCISCO, *August 13, 1853.*

“SIR: I have to acknowledge the receipt of a letter from you, under date August 4th, apprising me that in obedience to instructions from the Secretary of the Treasury, you will on the 13th instant give up the possession of my warehouse on Battery street, and not pay any rent for it after that date.

“I do not recognize a right in the Secretary of the Treasury to rescind my contract with the government in reference to said warehouse, and I shall therefore claim payment of rent pursuant to said contract until the expiration of the term for which the building was leased.

“Respectfully, your obedient servant,

“ALEX. CROSS.

“RICHARD P. HAMMOND, Esq.,  
“*Collector of Customs.*”

On the 15th day of August, A. D. 1853, the collector gave notice to the Secretary of the Treasury as follows:

“CUSTOM-HOUSE, SAN FRANCISCO,  
“*Collector's Office, August 15, 1853.*

“SIR: I have the honor to inform you that I have, in obedience to your instructions dated April 12th, 1853, abandoned the store leased from Daniel Saffarrans, and transmit herewith a copy of the notice served upon Mr. Cross the assignee of Saffarans. The bonded merchandise which was stored in that warehouse has been transferred to a store of brick, fire-proof, which has been bonded by Messrs. Hall & Co., on the corner of Green and Battery streets. The unclaimed

merchandise has been removed to Eldridge's stores, corner of Union street. That which has been in store over nine months will be sold at auction on the 22d instant.

"I have the honor to be, very respectfully, your obedient servant,  
"RICHARD P. HAMMOND,  
"Collector.

"Hon. JAMES GUTHRIE,

"Secretary of the Treasury, Washington."

From the 13th day of August till the 1st day of September, A. D. 1853, the warehouse in question was unoccupied. From the 1st day of September, A. D. 1853, till the 1st day of September, A. D. 1854, it was occupied by Francisco Salvador Alvarez, to whom it was leased at the rent of seven hundred and fifty dollars a month. From the 1st day of September, A. D. 1854, to the 10th day of August, A. D. 1855, Cross & Co. received goods therein on storage, at rates specified in an account appended to the deposition of Henry Lund. From the 10th day of August, A. D. 1855, till the early part of the year 1857, J. J. Southgate & Co. occupied about three-fourths of the first floor, at a rent of *one hundred dollars* a month; and Cross & Co. received goods in the rest of the building on storage, at rates specified in the account already mentioned, appended to the deposition of Henry Lund.

The rent received from F. S. Alvarez amounted to the sum of *nine thousand dollars*. The rent received from J. J. Southgate & Co. to the 10th of November, A. D. 1856, amounted to the sum of *fifteen hundred dollars*. Cross & Co. received for storage up to and inclusive of the 14th day of November, A. D. 1856, the sum of *six thousand one hundred and twenty-one dollars and seventeen cents*; and incurred expenses in receiving and delivering to the amount of *nine hundred and forty-five dollars*, leaving the "amount of net storage" the sum of *five thousand one hundred and seventy-six dollars*.

The petitioner now claims as follows:

For rent of the above mentioned iron warehouse, from the 13th day of August, A. D. 1853, to the 14th day of November, A. D. 1856, 39 months, at \$1,500 a month.....	\$58,500 00
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He offers to give the United States credit as follows:

For the money received from F. S. Alvarez.....	\$9,000 00
For the money received from J. J. Southgate & Co.....	1,500 00
For the money received for storage.....	5,176 00

	15,676 17
After deducting therefrom a commission of five per cent.	783 80

Net amount to be credited.....	14,892 37
Balance now claimed.....	43,607 63
	<u>58,500 00</u>

The petitioner claims the above balance of *forty-three thousand six hundred and seven dollars and sixty-three cents*, with interest thereon at the rate of six per centum per annum.

I am of the opinion that the lease from Daniel Saffarrans to the United States is valid as a lease to them of the warehouse for ten years, at the rent of *fifteen hundred dollars* a month, payable monthly; and that the United States are liable and bound to pay, to whomsoever may be legally entitled thereto, the rent from the 13th day of August, A. D. 1853, till the 13th day of January, A. D. 1861, when the term will expire, subject to a deduction for such profits as have been or may be reasonably realized therefrom.

I am also of the opinion that it was not incumbent upon the petitioner to take possession of the warehouse when it was abandoned by the United States, or to take any steps thereafter to make it in any way available during the term for which it was leased. But as he has done so, he is, under the circumstances, responsible to the United States only for such profits as he may have reasonably realized therefrom. I think, too, that the claim of a commission of five per centum upon the amount received for rents and storage is reasonable and just.

But since the first hearing of this case a doubt has arisen in regard to the sufficiency of the proof of the title of the petitioner as assignee of Daniel Saffarrans; and that question has again been argued before us; the petitioner, by his counsel, stating that he can offer no further evidence. Upon consideration of the whole evidence on this point, I am of the opinion that the petitioner's title is not sufficiently shown.

Before the former hearing of this case, the solicitor for the United States and the counsel for the petitioner filed in this case the following paper:

“IN THE COURT OF CLAIMS.

“ALEXANDER CROSS *vs.* THE UNITED STATES.

“It is agreed that the paper marked thus, (Paper No. 1,) and put on file in this case, is a true copy of the original article of agreement between Daniel Saffarrans, of the first part, and the United States of America, by James Collier, collector of the district of San Francisco, California, of the second part, and of the approval of said agreement by W. M. Meredith, Secretary of the Treasury.

“That the paper marked thus, (Paper No. 2,) and also put on file in this case, contains true copies of the originals of the following enumerated papers, to wit:

“1st. A copy of the article of agreement of the 11th of November, 1850, between T. Butler King, collector of the port of San Francisco, for and on behalf of the United States government, of the first part, and Daniel Saffarrans, of the second part.

“2d. A copy of the approval of the last named article of agreement by Thomas Corwin, Secretary of the Treasury, endorsed on said original article of agreement.

“3d. A copy of the assignment of said last named article of agree-

ment by said Daniel Saffarrans to Alexander Cross, the plaintiff in this case.

"4th. A copy of the approval of said assignment by R. W. Crittenden, A. P. Sheldon, and Isaac Saffarrans, (B,) as the attorneys of said Daniel Saffarrans, endorsed on said agreement.

"5th. A copy of a letter of said Daniel Saffarrans by his attorney, Isaac Saffarrans, (B,) of the date of the 15th of September, 1851, addressed to T. Butler King, collector of the port of San Francisco, notifying him that said article of agreement of the 10th of November, 1850, had been assigned to said Alexander Cross, and requesting him to pay all back and future rents to said Cross.

"6th. A copy of the acceptance by said T. Butler King, as collector of the port of San Francisco, of the iron warehouse named in said article of the 11th of November, A. D. 1850, and of his official recognition of said Alexander Cross as the landlord to whom the rents of said warehouse were to be paid.

"It is agreed that the paper marked thus, (Paper No. 3,) and also put on file in this case, is the original letter of Richard P. Hammond, collector of San Francisco, to Alexander Cross, notifying him that, in pursuance to instructions from the Secretary of the Treasury, he should, on the 13th of August, 1853, abandon said warehouse, and stop the payment of rent from that date.

"Signed—

"M. BLAIR,  
"Solicitor United States.  
"S. F. VINTON,  
"For Alexander Cross.

"JUNE 4, 1857."

On the paper containing the power of attorney from Daniel Saffarrans to Robert H. Crittenden, Isaac Saffarrans, and A. P. Sheldon, and the power of attorney from R. H. Crittenden to George W. Guthrie, the solicitor made the following endorsement: "I waive all objection to the admissibility of this paper in evidence." Signed "M. Blair, solicitor," and dated "Washington, June 4, 1857."

On the power of attorney from A. P. Sheldon to Isaac Saffarrans, (B,) the solicitor made the following endorsement: "I waive all objection to the admissibility of this paper in evidence." Signed "M. Blair, solicitor," and dated "Washington, June 4, 1857."

On the power of attorney from Daniel Saffarrans to Isaac Saffarrans, (B,) the solicitor made the following endorsement: "I waive objection to the admissibility of this paper in evidence." Signed "M. Blair, solicitor," and dated "June 4, 1857."

All the papers above mentioned were read by the petitioner's counsel in evidence, without any objection being made by the solicitor for the United States.

I understand the above mentioned agreement between the solicitor of the United States and the counsel for the petitioner, and the several endorsements above mentioned made by the solicitor of the United States, as *solemn admissions*, the object of which was to dispense with the necessity of producing the originals, where copies only are filed,



and of proving the due execution of any of the originals. I am therefore of the opinion that we are bound to treat the above copies as originals, and to consider the execution of all the originals as *solemnly admitted*.

In the above agreement of counsel, as it was originally drawn, at the conclusion of the sixth enumeration, after the word "paid," there was added as follows: "and it is agreed that no further proof will be required of said assignment of said article of agreement of said 11th of November, 1850, and of the recognition of said Cross as the landlord to whom rent was to be paid by the United States." This was stricken out by drawing the pen across it; the object plainly being to avoid an admission of a mere conclusion of law; for whether the papers above mentioned, as understood by me, do or do not prove the assignment from Saffarrans to Cross is merely a conclusion of law.

But it is plain, I think, that those papers do not show a valid assignment from Daniel Saffarrans to the petitioner. Isaac Saffarrans alone, in proper person, endorsed his approval on the assignment. George W. Guthrie, professing to act as the attorney in fact of Robert H. Crittenden, undertook to endorse the approval of the latter thereon; but he was not duly authorized to do so. The power of attorney under which he acted was invalid. It purported to confer on him the powers conferred on R. H. Crittenden by the power of attorney from Daniel Saffarrans to Robert H. Crittenden, Isaac Saffarrans, and A. P. Sheldon. But the latter power of attorney conferred on those three persons a joint and not a several power; and the power of substitution therein contained was a joint and not a several power. The three jointly had the power to appoint a substitute, but no one of them had such power separately. The power of attorney, therefore, from Robert H. Crittenden to George W. Guthrie was invalid; it gave no power to Guthrie to act in the premises; hence, there was no approval by Crittenden, Isaac Saffarrans, and A. P. Sheldon of the assignment from Daniel Saffarrans to the petitioner; and according to the express stipulation between the parties that assignment is not to be valid until such approval is endorsed thereon.

I am therefore of the opinion that the petitioner has not shown a title to relief.

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IN THE COURT OF CLAIMS.

ALEXANDER CROSS *vs.* THE UNITED STATES.

LORING, Judge.

I concur in the opinion that has just been read in all respects, except that I think the petitioner's legal title is defective in this—

He claims under an assignment of the lease, and has put in evidence the deed of assignment itself. It requires expressly that the approval of R. H. Crittenden, Isaac Saffarrans, and A. P. Sheldon, should be endorsed upon it, as a condition precedent to its validity as a deed.

The approval by Crittenden is not shown. An approval is signed by his attorney, G. W. Guthrie; but the power of attorney from

Crittenden, under which Guthrie acted, only purported to substitute him for Crittenden in another power of attorney, made by Daniel Saffarrans to R. H. Crittenden, Isaac Saffarrans, and A. P. Sheldon; and this power of attorney does not provide for, include, or refer to the approval of the assignment, but relates exclusively to other and different matters, and a substitution of Guthrie for Crittenden, under this power, could authorize Guthrie to act only in those matters to which the power of attorney referred.

The approval by Crittenden was provided for in a separate writing, and from its nature, as a matter of personal truth and confidence, he could not delegate it to an attorney, and there is no instrument of his in the case that even purports to do so or shows any such intent. The approval, therefore, signed by Guthrie, as Crittenden's attorney, is unauthorized and a mere nullity, of no legal effect for any purpose.

Then a legal approval by Sheldon cannot be inferred from the delivery of the assignment by Guthrie as Sheldon's attorney, because Sheldon's approval is required to be endorsed, and therefore *express*; and an approval merely inferred from anything, and not endorsed, would be legally insufficient. The requirement of the endorsement is the same as that of the approval; one is as material as the other, and both are absolutely essential to the validity of the deed.

As the petitioner has put in evidence the deed of assignment itself, the positive proof that it was not legally executed excludes all inference to the contrary from the facts of the case, and consequently his title to the relief he prays for is not made out.